



March 7, 2001

Mr. Joe De Los Santos  
Walsh, Anderson, Brown, Schulze & Aldridge, P.C.  
Attorneys at Law  
P.O. Box 460606  
San Antonio, Texas 78246-0606

OR2001-0894

Dear Mr. De Los Santos:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act (the "Act"). Your request was assigned ID# 144848.

The Northside Independent School District (the "district"), which you represent, received a request for information related to a district employee. You indicate that you have released a portion of the responsive information. However, you claim that a portion of the requested information that you have provided to this office for review is excepted from disclosure under sections 552.101, 552.114 and 552.130 of the Government Code. You also ask if release of the high school transcript of the subject employee is prohibited by the Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g, or is excepted from the public disclosure requirements of the Act under section 552.026 or 552.114 of the Government Code. We have reviewed the submitted information and considered your arguments.

FERPA provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information (other than directory information) contained in a student's education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student's parent. *See* 20 U.S.C. § 1232g(b)(1). "Education records" means those records that contain information directly related to a student and are maintained by an educational agency or institution or by a person acting for such agency or institution. *Id.* § 1232g(a)(4)(A). Government Code section 552.114 excepts from disclosure student records at an educational institution funded completely or in part by state revenue. Section 552.026 of the Government Code states that information contained in education records of an educational agency or institution are not subject to public disclosure except in conformity with FERPA. This office generally applies the same analysis under FERPA and section 552.114. *See e.g.*, Open Records Decision No. 539 (1990). In this case, we agree

with the district's position that this transcript is not excepted from disclosure under FERPA or section 552.114 "because the requestor is seeking [the employee's] records as an employee and not as a student of the District." We note that the request is for "the personnel file" of a district employee. We find that this request is for a personnel record rather than for an "education record" for purposes of FERPA or a "student record" for purposes of section 552.114. Therefore, this information is not excepted from required disclosure by either FERPA or section 552.114 of the Government Code.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Release of an employment eligibility verification form (Form I-9), is governed by section 1324a of title 8 of the United States Code, which provides that the form "may not be used for purposes other than for enforcement of this chapter" and for enforcement of other federal statutes governing crime and criminal investigations. 8 U.S.C. § 1324a(b)(5); *see also* 8 C.F.R. § 274a.2(b)(4). Release of this document under chapter 552 of the Government Code would be "for purposes other than for enforcement" of the referenced federal statutes. Accordingly, we conclude that the submitted Form I-9 is confidential and must be withheld under section 552.101 of the Government Code.

Social security numbers may also be withheld in some circumstances under section 552.101 of the Government Code. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers in the records here are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure on the basis of that federal provision. We caution, however, that section 552.353 of the Open Records Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained pursuant to any provision of law, enacted on or after October 1, 1990.

The district asserts that a portion of the submitted information consists of medical records. Release of medical records is governed by chapter 159 of the Occupations Code, the Medical Practice Act (the "MPA"). However, from our review of the submitted materials, we conclude that they do not include any medical records.

Section 552.101 also encompasses information made confidential by judicial decision. Texas courts hold that information is protected by common law privacy if (1) the information contains highly intimate or embarrassing facts the release of which would be highly

objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Personal financial information concerning an individual, and not involving a transaction with a governmental body, generally meets both prongs of this test, and is therefore protected by a common law right of privacy. See Open Records Decision Nos. 545 (1990), 523 (1989). We have marked the submitted information that is protected by the common law right of privacy. This information must be withheld under section 552.101 of the Government Code.

The submitted materials include information that is excepted under section 552.130 of the Government Code. This section governs the release and use of information obtained from motor vehicle records, and provides in relevant part as follows:

(a) Information is excepted from [required public disclosure] if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

You must withhold the Texas driver's license numbers in the submitted materials pursuant to section 552.130 of the Government Code.

The submitted materials also include information that may be excepted from disclosure by section 552.117 of the Government Code. This section excepts from required public disclosure the home addresses, home telephone numbers, social security numbers, or personal family members information of public employees who request that this information be kept confidential under section 552.024. Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 at 5 (1989). Therefore, section 552.117 requires you to withhold this information if the subject employee requested that this information be kept confidential under section 552.024 before the request for information was received. But you may not withhold the information if this employee did not elect non-disclosure under section 552.024 or made such an election after this request for information was made. We have marked the information that is subject to section 552.117 of the Government Code.

In conclusion, you must withhold the portion of the submitted information that we have marked as being excepted from disclosure under section 552.101 of the Government Code. You must withhold Social Security Numbers if this information was obtained or maintained pursuant to any provision of law, enacted on or after October 1, 1990. You must withhold the portion of the submitted information that we have marked as being subject to section 552.117 of the Government Code if the subject employee elected non-disclosure

under section 552.024 of the Government Code before the district received the request for information. You must withhold Texas drivers' license numbers under section 552.130 of the Government Code. All other information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

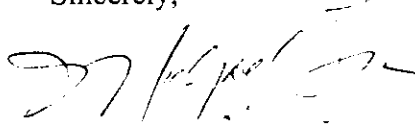
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Jay Burns", written over a horizontal line.

Michael Jay Burns  
Assistant Attorney General  
Open Records Division

MJB/er

Ref: ID# 144848

Encl: Submitted documents

cc: Mr. Danny Robbins  
*Houston Chronicle Sports*  
801 Texas Avenue  
Houston, Texas 77002  
(w/o enclosures)